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9 **BEFORE THE**
BOARD OF REGISTERED NURSING
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. **2013-773**

13 **DAWN ELIZABETH KANE**
14 **11 El Caserio**
Aliso Viejo, CA 92656

A C C U S A T I O N

15 **Registered Nurse License No. 719196**

16 Respondent.

17
18 Complainant alleges:

19 **PARTIES**

20 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her
21 official capacity as the Executive Officer of the Board of Registered Nursing, Department of
22 Consumer Affairs.

23 2. On or about February 4, 2008, the Board of Registered Nursing issued Registered
24 Nurse License Number 719196 to Dawn Elizabeth Kane (Respondent). The Registered Nurse
25 License was in full force and effect at all times relevant to the charges brought herein and will
26 expire on December 31, 2013, unless renewed.

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JURISDICTION

3. This Accusation is brought before the Board of Registered Nursing (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

4. Section 2750 of the Code provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

5. Section 2764 of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license. Under section 2811, subdivision (b) of the Code, the Board may renew an expired license at any time within eight years after the expiration.

STATUTORY PROVISIONS

6. Section 482 of the Code states:

Each board under the provisions of this code shall develop criteria to evaluate the rehabilitation of a person when:

(a) Considering the denial of a license by the board under Section 480; or

(b) Considering suspension or revocation of a license under Section 490.

Each board shall take into account all competent evidence of rehabilitation furnished by the applicant or licensee.

7. Section 490 of the Code provides, in pertinent part, that a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

8. Section 493 of the Code states:

Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, and the board

1 may inquire into the circumstances surrounding the commission of the crime in order
2 to fix the degree of discipline or to determine if the conviction is substantially related
to the qualifications, functions, and duties of the licensee in question.

3 As used in this section, "license" includes "certificate," "permit," "authority,"
4 and "registration."

5 9. Section 2761 of the Code states:

6 The board may take disciplinary action against a certified or licensed nurse or
7 deny an application for a certificate or license for any of the following:

8 (a) Unprofessional conduct, which includes, but is not limited to, the
following:

9

10 (f) Conviction of a felony or of any offense substantially related to the
11 qualifications, functions, and duties of a registered nurse, in which event the record of
the conviction shall be conclusive evidence thereof.

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13 10. Section 2762 of the Code states:

14 In addition to other acts constituting unprofessional conduct within the meaning
15 of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person
licensed under this chapter to do any of the following:

16 (a) Obtain or possess in violation of law, or prescribe, or except as directed by
17 a licensed physician and surgeon, dentist, or podiatrist administer to himself or
herself, or furnish or administer to another, any controlled substance as defined in
18 Division 10 (commencing with Section 11000) of the Health and Safety Code or any
dangerous drug or dangerous device as defined in Section 4022.

19

20 (c) Be convicted of a criminal offense involving the prescription, consumption,
21 or self-administration of any of the substances described in subdivisions (a) and (b) of
this section, or the possession of, or falsification of a record pertaining to, the
22 substances described in subdivision (a) of this section, in which event the record of
the conviction is conclusive evidence thereof.

23

24 (e) Falsify, or make grossly incorrect, grossly inconsistent, or unintelligible
25 entries in any hospital, patient, or other record pertaining to the substances described
in subdivision (a) of this section.

26 11. Section 2765 of the Code states:

27 A plea or verdict of guilty or a conviction following a plea of nolo contendere
28 made to a charge substantially related to the qualifications, functions and duties of a
registered nurse is deemed to be a conviction within the meaning of this article. The

1 board may order the license or certificate suspended or revoked, or may decline to
2 issue a license or certificate, when the time for appeal has elapsed, or the judgment of
3 conviction has been affirmed on appeal or when an order granting probation is made
4 suspending the imposition of sentence, irrespective of a subsequent order under the
provisions of Section 1203.4 of the Penal Code allowing such person to withdraw his
or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of
guilty, or dismissing the accusation, information or indictment.

5 12. Section 4022 of the Code states

6 "Dangerous drug" or "dangerous device" means any drug or device unsafe for
7 self-use in humans or animals, and includes the following:

8 (a) Any drug that bears the legend: "Caution: federal law prohibits
dispensing without prescription," "Rx only," or words of similar import.

9 (b) Any device that bears the statement: "Caution: federal law restricts this
10 device to sale by or on the order of a _____," "Rx only," or words of similar
11 import, the blank to be filled in with the designation of the practitioner licensed to use
or order use of the device.

12 (c) Any other drug or device that by federal or state law can be lawfully
dispensed only on prescription or furnished pursuant to Section 4006.

13 13. Section 4060 of the Code states, in pertinent part, that no person shall possess any
14 controlled substance, except that furnished to a person upon the prescription of a physician,
15 dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor.

16 REGULATORY PROVISIONS

17 14. California Code of Regulations, title 16, section 1444, states:

18 A conviction or act shall be considered to be substantially related to the
19 qualifications, functions or duties of a registered nurse if to a substantial degree it
20 evidences the present or potential unfitness of a registered nurse to practice in a
manner consistent with the public health, safety, or welfare. Such convictions or acts
shall include but not be limited to the following:

21 (a) Assaultive or abusive conduct including, but not limited to, those violations
22 listed in subdivision (d) of Penal Code Section 11160.

23 (b) Failure to comply with any mandatory reporting requirements.

24 (c) Theft, dishonesty, fraud, or deceit.

25 (d) Any conviction or act subject to an order of registration pursuant to Section
26 290 of the Penal Code.

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1 15. California Code of Regulations, title 16, section 1445 states:

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3 (b) When considering the suspension or revocation of a license on the grounds
4 that a registered nurse has been convicted of a crime, the board, in evaluating the
5 rehabilitation of such person and his/her eligibility for a license will consider the
6 following criteria:

7 (1) Nature and severity of the act(s) or offense(s).

8 (2) Total criminal record.

9 (3) The time that has elapsed since commission of the act(s) or offense(s).

10 (4) Whether the licensee has complied with any terms of parole, probation,
11 restitution or any other sanctions lawfully imposed against the licensee.

12 (5) If applicable, evidence of expungement proceedings pursuant to Section
13 1203.4 of the Penal Code.

14 (6) Evidence, if any, of rehabilitation submitted by the licensee.

15 COSTS

16 16. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
17 administrative law judge to direct a licentiate found to have committed a violation or violations of
18 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
19 enforcement of the case, with failure of the licentiate to comply subjecting the license to not being
20 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be
21 included in a stipulated settlement.

22 FIRST CAUSE FOR DISCIPLINE

23 (June 13, 2012 Criminal Convictions for Second Degree Commercial Burglary
24 & Prescription Forgery)

25 17. Respondent has subjected her license to disciplinary action under sections 490 and
26 2761, subdivision (f) of the Code in that Respondent was convicted of crimes that are
27 substantially related to the qualifications, functions, and duties of a registered nurse. The
28 circumstances are as follows:

a. On or about June 13, 2012, in a criminal proceeding entitled *People of the State
of California v. Dawn Elizabeth Kane, aka Dawn E. Kane, aka Dawn Jones, aka Dawn E. Jones,*

1 in Orange County Superior Court, case number 11-08426, Respondent was convicted on her plea
2 of guilty of violating two counts of Penal Code section 459-460, subdivision (b), second degree
3 commercial burglary, and Business and Professions Code section 4324, subdivision (a),
4 prescription forgery, felonies. The court dismissed three additional counts of felony second
5 degree commercial burglary (Pen. Code, § 459-460(b)), pursuant to a plea agreement.

6 b. As a result of the convictions, on or about June 13, 2012, Respondent was
7 sentenced to serve 90 days in the Orange County Jail, with electronic confinement authorized.
8 Respondent was granted three years formal probation, and ordered to pay fees and fines, and to
9 comply with felony probation terms.

10 c. The facts that led to the convictions are that on or about September 21, 2011,
11 Dr. B.A. contacted the Newport Beach Police Department to report that Respondent, a former
12 employee, had stolen prescription forms from Dr. B.A.'s practice and used them to obtain
13 prescription medications illegally. The doctor had been contacted by a Walgreen's pharmacy due
14 to concerns of overprescribing of various medications. The doctor learned that the prescriptions
15 were being issued under the name of Respondent and Respondent's husband. An investigator
16 with the Newport Beach Police Department obtained a Controlled Substance Utilization Review
17 and Evaluation System (CURES) report for Respondent's prescription history for the previous 12
18 months. The CURES report indicated that Respondent had also obtained prescription
19 medications illegally by using forged prescription forms under the name of Dr. A.M.P. The
20 investigator contacted Dr. A.M.P. and learned that the doctor used the same Costa Mesa surgery
21 center where Respondent had been employed. Dr. A.M.P. left her prescription pads at the surgery
22 center where Respondent had access to them. The Walgreen's store manager provided the
23 investigator with the prescription profiles for Respondent and her husband. The profiles revealed
24 that between April 20, 2011 and October 11, 2011, Respondent filled 36 fraudulent prescriptions,
25 and Respondent's husband filled 21 fraudulent prescriptions using either Dr. B.A.'s or Dr.
26 A.M.P.'s DEA numbers. The investigator viewed video surveillance of Respondent entering the
27 Walgreen's on October 11, 2011, walking to the pharmacy area and handing a prescription to a
28 pharmacy technician. Respondent was videotaped leaving the Walgreen's holding a prescription.

1 **PRAYER**

2 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
3 and that following the hearing, the Board of Registered Nursing issue a decision:

4 1. Revoking or suspending Registered Nurse License Number 719196, issued to Dawn
5 Elizabeth Kane;

6 2. Ordering Dawn Elizabeth Kane to pay the Board of Registered Nursing the
7 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
8 Professions Code section 125.3;

9 3. Taking such other and further action as deemed necessary and proper.

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11
12 DATED: March 15, 2013

for Anne Bern

13 *for* LOUISE R. BAILEY, M.ED., RN
14 Executive Officer
15 Board of Registered Nursing
16 Department of Consumer Affairs
17 State of California
18 Complainant

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